S.B. Civil Misc. Appeal No.461/2005
Pali Sethi
vs
Pramod Rathi & Ors.

DATE OF ORDER : - 24.8.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.Vijay Aggarwal, for the appellant.

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Heard learned counsel for the appellant.

The appellant is aggrieved against the order of the trial court dated 2.6.2004 by which the trial court decided the issue about the jurisdiction of the civil court in the matter of hearing of the suit filed by the appellant-plaintiff. The trial court held that the suit has been filed for partition of agricultural land and injunction and, therefore, it is triable by the revenue court only. The trial court, therefore, ordered return of the plaint for presentation in the court of competent jurisdiction.

According to learned counsel for the appellant the land in question is situated within the municipal limit and also surrounded by the Abadi area. It is also submitted that part of same Khasra was acquired by the State Government and acquisition proceedings were challenged by filing various writ petitions, S.B. Civil Writ Petition

No.5444/1991-Smt. Vijay Gupta Vs. State of Rajasthan & Ors alongwith other 13 connected writ petitions. Those writ petitions were dismissed by this Court by order dated 4.1.96 and according to learned counsel for the appellant the appeal against the judgment of the Single Judge was also dismissed by the Division Bench of this Court. Therefore, according to learned counsel for the appellant when adjoining land is Abadi land then even though the land involved in this suit and recorded as agricultural land in revenue record, still this land can be treated as Abadi land and suit can be maintained in the civil court. Learned counsel for the appellant relied upon the judgment of this Court delivered in the case of Banshidhar & Anr. Vs. Ram Narain reported in 1997 WLC (Raj) UC 676.

I considered the submissions of learned counsel for the appellant and perused the reasons given in the impugned order. It is not in dispute that in plaint, plaintiff categorically stated that he purchased the agricultural land by sale agreement dated 24.12.1990. In the plaint it is nowhere stated that land in question was ever converted by the order of the competent authority from agricultural to Abadi land. According to learned counsel for the appellant still the land is recorded as agricultural land in revenue record. Therefore, so far as present land is concerned, it is not in dispute that this land was purchased by the appellant as agricultural land in the year 1990 and it was never

converted to Abadi land. The revenue record for which there is a presumption attached of correctness of entry also shows the land to be agricultural land. Therefore, so far as question of fact is concerned it has rightly been decided by the court below that it is an agricultural land. The judgment relied upon by learned counsel for the appellant delivered in the case of Banshidhar (supra) has no relevane at all as in that case this Court held that in view of the evidence produced by the parties, it is clear that defendant, who took a plea that the land in question is agricultural land, failed to prove the land to be agricultural land and in the plaint, it was nowhere stated that the land was agricultural land. Therefore, in fact, in that case the question of fact about the nature of the land was decided against the defendant and, therefore, it was held that suit is triable by the civil court.

So far as judgment of this Court delivered in S.B. Civil writ petition No.5444/1991-Smt. Vijay Gupta Vs. State of Rajasthan alongwith 12 connected matters decided on 4.1.1996 is concerned, that judgment has no relevance at all in view of the fact that in that case a notification for acquiring the land was issued and that land was acquired. Even if the land after acquisition is converted by the State Government or by the order of the competent authority then that changes the nature of the land for which the order was passed and not for adjoining land. Learned counsel for the appellant failed to bright to

the notice of this Court any of the provisions of law which provides that agricultural land cannot exist in Municipal Area or agricultural land automatically stand converted if those land falls within the municipal area. Rather the revenue law of the Rajasthan clearly provides that unless and until the revenue land is converted by the order of the competent authority, that land shall be treated to be agricultural land. Mere different use of agricultural land by the Khatedar-tenant of the land cannot change the nature of the land. In fact, the Rajasthan Tenancy Act clearly provides that in case land is not used for agricultural purpose, the land can revert back to the State Government.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-